

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

KIMBERLY ZERBE,

Plaintiff,

v.

TRAFFIC CONTROL SERVICES, LLC,
d/b/a FLAGGER FORCE,

Defendant.

Case No.: _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Kimberly Zerbe, by and through her attorneys, brings this civil action for damages against the above-named Defendant, TRAFFIC CONTROL SERVICES, LLC, d/b/a FLAGGER FORCE, demands a trial by jury, and complains and alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction of the claims set forth in this Complaint is proper in this judicial district pursuant to Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. §2000e *et seq.* and 28 U.S.C. §§1331 and 1343.

2. Declaratory relief is sought pursuant to 28 U.S.C. §§2201 and 2202.

3. Venue is also proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to these claims occurred in this Judicial District, and under 42 U.S.C. § 2000e-

5(f)(3), in that among other things the unlawful discrimination practices that are the subject of this action were committed in this Judicial District.

THE PARTIES

4. Plaintiff, Kimberly Zerbe (hereinafter “Ms. Zerbe”), is an adult Caucasian female residing at 917 Mifflin Street, Lebanon, Lebanon County, Pennsylvania.

5. Defendant, Traffic Control Services, LLC, d/b/a Flagger Force (hereinafter “Flagger Force” or “Defendant”), is a domestic corporation with a registered office address of 8170 Adams Drive, Hummelstown, Dauphin County, Pennsylvania.

ADMINISTRATIVE PROCEEDINGS

6. On or about February 13, 2017, Ms. Zerbe filed a Complaint with the Equal Employment Opportunity Commission (“EEOC”), which was docketed as Charge No. 530-2017-01618, with instruction to be cross-filed by the EEOC with the Pennsylvania Human Relations Commission (“PHRC”) for purposes of being dual filed with the PHRC.

7. Ms. Zerbe has been advised by the EEOC of her right to sue in Federal court, which notice was received on or about May 15, 2017.

STATEMENT OF FACTS

8. On or about March 19, 2015, Ms. Zerbe was hired by Defendant as a crew member; thereafter she was promoted to Advanced Crew Leader (“ACL”).

9. During her tenure as an ACL with Defendant, Ms. Zerbe was subjected to harassment and discrimination on the basis of her sex; among other things, Ms. Zerbe:

- a. was held to a higher standard of performance than other ACLs, who were male;
- b. was publicly cursed and berated by her supervisors for perceived faults that went unnoticed in other ACLs, who were male;
- c. was removed from jobsites explicitly on the basis of her sex; and
- d. was subjected to pretextual discipline.

10. On or about October 21, 2016, Ms. Zerbe was subjected to sexually-charged accusations by Defendant's Field Specialist, Johnny (last name unknown), who insinuated that she was “doing [sexual] favors” for Defendants’ clients.

11. When Ms. Zerbe reported the comments to Defendant’s Safety Advocate Manager, Jen Harmen, Ms. Harmen laughed at Ms. Zerbe and did not file or otherwise acknowledge the complaint.

12. Ultimately, Ms. Zerbe was terminated on or about December 13, 2016, allegedly for acting unprofessionally toward and arguing with a client; however, this was a complete fabrication, as the inappropriate client interaction was done by Dave Ross, Defendant's Field Specialist.

COUNT I

VIOLATIONS OF TITLE VII Sex-Based Discrimination

13. All prior paragraphs are incorporated herein as if set forth fully below.

14. Ms. Zerbe was subjected to discrimination on the basis of her female sex in violation of Title VII.

15. Defendant discriminated against Ms. Zerbe in violation of her civil rights under Title VII by treating her differently, holding her to different standards than male supervisors, denying her advancement opportunities, and ultimately terminating her on the basis of her sex.

16. Defendant knew or should have known that this disparate treatment subjected Ms. Zerbe to discrimination on the basis of her sex.

17. The sex-based discrimination to which Ms. Zerbe was subjected would have detrimentally affected a reasonable person in her position.

18. Defendant's failure to maintain a workplace free from sex-based discrimination was intentional, malicious, and in reckless indifference to her protected federal rights.

19. At all times relevant and material to this Complaint, Ms. Zerbe was a member of a protected class.

20. As a result of Defendant's actions, Ms. Zerbe has had her reputation damaged and standing in the community lowered, has suffered and continues to suffer pain, humiliation, ridicule, and embarrassment, has endured public humiliation, ridicule and embarrassment before her family and friends, as well as sustained economic losses.

21. Ms. Zerbe has and continues to suffer irreparable harm as a result of Defendant's violation of her protected federal rights.

WHEREFORE, Plaintiff, Kimberly Zerbe, respectfully requests this Honorable Court to enter judgment in her favor and against Defendant, Traffic Control Services, LLC, d/b/a Flagger Force, and grant such relief as may be appropriate, including liquidated, compensatory and punitive damages, costs and attorneys' fees, and for such other further relief, in law and in equity, both actual and special, to which this Honorable Court deems just fair and appropriate, which total amount exceeds the jurisdictional limits for mandatory arbitration referral.

COUNT II

VIOLATIONS OF TITLE VII Retaliation

22. All prior paragraphs are incorporated herein as if set forth fully below.

23. As set forth above, subsequent to Ms. Zerbe's complaints regarding the sex based discrimination, Defendant and/or its management retaliated against Ms. Zerbe, by denying her advancement opportunities on the basis of her sex, pulling her from worksites and refusing to place her on worksites for specific clients, and ultimately terminating her, because she had repeatedly complained of the disparate treatment.

24. As a result of Defendant's actions, Ms. Zerbe has had her reputation damaged and standing in the community lowered, has suffered and continues to suffer pain, humiliation, ridicule, and embarrassment, has endured public humiliation, ridicule and embarrassment before her family and friends, as well as sustained economic losses.

WHEREFORE, Plaintiff, Kimberly Zerbe, respectfully requests this Honorable Court to enter judgment in her favor and against Defendant, Traffic Control Services, LLC, d/b/a Flagger Force, and grant such relief as may be appropriate, including liquidated, compensatory and punitive damages, costs and attorneys' fees, and for such other further relief, in law and in equity, both actual and special, to which this Honorable Court deems just fair and appropriate, which total amount exceeds the jurisdictional limits for mandatory arbitration referral.

DEMAND FOR JURY

Pursuant to Federal Rule of Civil Procedure 38(b) and otherwise, Plaintiff respectfully demands a trial by jury.

Respectfully submitted,

McCarthy Weisberg Cummings, P.C.

Dated: August 8, 2017

/s/ Steve T. Mahan

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